In the High Court of Judicature at Madras

Dated: 16/06/2003

C o r a m

The Honourable Mr.Justice P.K.MISRA
AND
The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Writ Petition No.20045 of 1998

1. Chief Engineer,
HQ Southern Command,
Pune 411 001
rep. by chief Engineer,
Chennai Zone,island grounds,
Chennai..-9.

2. The Union of India
rep. by Govt. of India,
Ministry of Defence,
New Delhi 110 011. ..Petitioners
-Vs-

1. Central Administrative Tribunal,
Madras Bench, by its
Registrar.

2. Shri DA Samuel
(UDC Retired from
GE DSSC Wellington ..Respondents

. . .
Petition filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari as stated therein.
. . .
For Petitioner : Mr.J.Madanagopal Rao,SCGSC

For respondents : Mr.P.V.S.Giridhar (R2)

:O R D E R

(The order of the Court was made by
F.M.IBRAHIM KALIFULLA,J.)

The challenge in the writ petition is to the order of the Central Administrative Tribunal,dated 3.11.1997 in O.A.No.580 of 1995.

2. The second respondent herein was originally employed as

lower division clerk in the office of the Station Workshop, EME, Willington with effect from 15..2.1963. As he became surplus in that unit, he was adjusted in the MES on transfer from EME with effect from 19.1.197 7. By virtue of the said transfer, he lost his erstwhile seniority though he was continued in the same pay scale . It is common ground that the second respondent reached the maximum in the pay scale of Lower Division Clerk and got stagnated in that scale from 1.1.1990. The scheme for career advancement of Grade 'C' and Grade 'D' employees, was announced by the proceedings dated 13.9.1991. Under the said scheme, while considering the claim made on behalf of the employees for revival of selection grades in the Grade 'C' and Grade 'D' cadres, it was announced that in respect of such of those Grade 'C' and Grade 'D' employees, who satisfy certain conditions and who were not promoted on regular basis after getting stagnated in their respective scales for a period of one year,were to be granted 'in situ promotion' and thereby, they would be eligible to draw the next higher scale available for the promotion post, until they really get promoted to that post as and when the vacancies arise. The conditions so imposed under the scheme as per the proceedings dated 13.9.1991 are as under:
This scheme shall be applicable to "(i) employees who are directly recruited to Grade 'C' or Grade 'D' post. (ii) employees whose pay on appointment to such a post is fixed at the minimum of the scale and (ii) employees who have not been promoted on regular basis even after one year on residing at the maximum of the scale of such post."
The Scheme will have the following basic features:
(a) Ground 'C' and 'D' employees who fulfills the conditions mentioned at (i),(ii) and (iii) above will be considered for promotion in situ to the next higher scale."

3. In the case of the second respondent, it was not in dispute that he satisfied all the conditions. However, when he was not granted the benefit, he made a representation before the concerned authorities at that point of time. At the instance of the petitioner, when clarification was sought for on various aspects of the scheme including the issue as to the eligibility for 'in situ' promotion in respect of persons who were initially appointed to the post on direct recruitment basis in a different unit, but subsequently, transferred to some other unit carrying the same scale of pay, the clarification came to be issued by the Under Secretary to the Government of India on 16.7.1992. In the clarification letter dated 16.7.92 it is stated to the effect that such persons are not eligible for 'in situ promotion' in terms of para 2 (a) of the Official Memorandum dated 13.9.1991. It is to be noted that subsequently, the second respondent came to be promoted on a regular basis in the year 1995.It was in those circumstances, the second respondent approached the Tribunal by the present O.A.No.580 of 1985, challenging the denial of the benefit granted under the Official Memorandum dated 13.9.1991.

4. The Tribunal held the view that the denial of the benefit under the Official Memorandum dated 13.9.1991 to the second respondent was not justified and that the clarification letter dated 16.7.1992 was not in tune with the scheme announced under the Official Memorandum dated 13.9.1991. We

are in full agreement with the views expressed by the Tribunal.

5. On a perusal of the scheme announced under the Official Memorandum dated 13.9.1991, in order for an employee to get the benefit of 'in situ promotion', what all required to be satisfied was that he should have been directly recruited to Grade 'C' or Grade 'D' post, that he must have got one pay on appointment to such post and his pay was fixed at the minimum of the scale and that he was not promoted on regular basis even after reaching the maximum in that scale for one full year in that post. As far as the compliance of the above said conditions are concerned, there is no dispute that the second respondent satisfied the above said conditions. A perusal of clause 'f' of the scheme disclose that employees even after the grant of 'in situ promotion', would continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per the provisions of the recruitment Rules. In other words, the grant of 'in situ promotion' does not in any way alter the existing seniority list of the employees in the Grade 'C' and Grade 'D' post. When that being the position, the contention now raised on behalf of the petitioners by relying upon the General Principles for determining seniority of various categories of persons employed in the Central Services, as has been prescribed in the proceedings dated 20.12.1974, will not have any bearing on the question of grant of 'in situ promotion' as per the scheme announced under the official Memorandum dated 13.9.1991. The second respondent did not come forward with a claim that his claim for 'in situ promotion' should be considered over and above the claims of the persons who were already serving in the transferred unit and by virtue of the transfer, though he was fixed as a junior most in the transferred post, yet his claim for 'in situ promotion' should be considered over and above the claims of the persons who were already in service in the transferred place. The scheme also does not in any way distinguish between the case of a person who has been transferred on request basis thereby losing his seniority in the transferred place. In such circumstances, there is absolutely no justification to deny the promotion 'in situ' once the second respondent satisfied the conditions prescribed under the scheme announced in the Official Memorandum dated 13.9.1991. The clarification letter dated 16.7.1992 attempting to alter the scheme dated 13.9.1991, cannot be allowed to take place. We do not find any merit in the writ petition. The order of Tribunal being perfectly in order, the writ petition fails and is dismissed.

5. In view of the disposal of the writ petition, the petitioners are directed to work out the benefits of in situ promotion to the second respondent from 1.4.1991 onwards within three months from the date of receipt of a copy of this order and disburse the same to him.

Index:Yes.
Internet:Yes.
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To

Central Administrative Tribunal,
Madras Bench, by its
Registrar.